

## Full-time Personnel Regulation

### Technician Workers' Compensation

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**Summary of Changes.** This handbook provides guidance on Federal Employees' Compensation Act (FECA) that provides disability benefits to Federal technicians affected by work-related injury or occupation disease.

**Applicability.** California National Guard Full-time Personnel Handbook (CNGFPH) applies to all California Army and California Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over technician personnel management.

**Proponent and Exception Authority.** The proponent of this handbook is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of the regulation is Army - A and Air Force - F.

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## 1. Purpose.

a. The Federal Employees' Compensation Act (FECA) provides compensation benefits to civilian employees of the United States Government for disability due to traumatic injury or disease sustained while in the performance of duty. The FECA also provides for the payment of benefits to dependents if a work-related injury or disease causes an employee's death. The FECA is intended to be remedial in nature, and proceedings under it are non-adversarial.

b. Benefits provided under the FECA constitute the sole remedy against the United States for work-related injury or death. A Federal employee or surviving dependent is not entitled to sue the United States or recover damages for such injury or death under any other statute.

## 2. References.

- a. DoD Instruction 6055.1, DoD Occupational Health Policy for the Department of Defense.
- b. Public Law 91-596, Federal Agency Safety Programs and Responsibilities.
- c. 29 CFR 1910.1, Occupational Safety and Health Standards.
- d. 5 USC 8101-8193, Federal Employees' Compensation Act.
- e. 20 CFR Parts 1-25, Office of Workers' Compensation Programs, Department of Labor.
- f. Publication CA-810, Injury Compensation for Federal Employees.

## 3. Definitions.

a. Traumatic Injury. A traumatic injury is defined as a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable by time and place of occurrence and member of the body affected; it must be caused by a specific event or incident or series of events or incidents within a single day or work shift.

b. Occupational Disease. An occupational disease is defined as a condition produced in the work environment over a period longer than one work day or shift. It may result from systemic infection, repeated stress or strain, exposure to toxins, poisons, or fumes, or other continuing conditions of the work environment.

c. Continuation of Pay. The FECA provides that an employee's regular pay may continue for up to 45 calendar days of wage loss due to disability and/or medical treatment after a traumatic injury. The intent of this provision is to avoid interruption of the employee's income while the case is being adjudicated. COP is not considered compensation and is therefore subject to the usual deductions from pay, such as income tax and retirement allotments. After entitlement to COP ends, the employee may apply for compensation or use leave. Employee is entitled to receive COP when he or she is absent from work due to disability or medical treatment.

d. Recurrence. A Recurrence of disability is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause, or a return or increase of disability due to a consequential injury. A recurrence of disability differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability.

e. Performance of Duty. An employee who is injured on agency premises during working hours has the protection of the FECA unless engaged in an activity which removes him or her from the scope of employment. Coverage includes injuries which occur while the employee was performing assigned duties or engaging in an activity which was reasonably associated with the employment. Coverage is extended to workers such as letter carriers, chauffeurs, and messengers who perform service away from the agency's premises. It is also extended to workers who are sent on errands or special missions and workers who perform services at home.

#### 4. Initiating Claims.

##### a. Exposure to Infectious Agents.

(1) The FECA does not provide for payment of expenses associated with simple exposure to an infectious disease without the occurrence of a work-related injury. Infectious diseases include tuberculosis, hepatitis, and HIV (human immunodeficiency virus).

(2) Both a work-related injury and exposure to a known carrier must occur before OWCP can pay for diagnostic testing. For instance, a puncture wound from a needle used to draw blood from a patient not known to be infected with HIV would entitle the worker to benefits only for the effects of the puncture wound, and the supervisor would not issue an Authorization for Examination And/Or Treatment, Form CA-16 authorize precautionary testing since no indication exists that a communicable disease has been contracted on duty. However, a puncture wound from a needle used to draw blood from a patient known to be infected with HIV would entitle the worker to benefits for the effects of the puncture wound and to payment for diagnostic studies to rule out the presence of a more serious condition, because exposure to a known carrier would be involved.

(3) Fear of exposure to an infectious agent does not entitle the worker to benefits under the FECA, since no definable injury has occurred. For instance, the act of searching an individual known to have hepatitis, or an individual who is believed to belong to a high-risk group for tuberculosis, would not entitle an employee to benefits. In these situations, the supervisor should not issue Form CA-16 as no injury or exposure has occurred.

##### b. Traumatic Injury.

(1) Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, Form CA-1. When an employee sustains a traumatic injury in the performance of duty, he or she should file an electronic report on Form CA-1. The form must be completed by the supervisor and employee as soon as possible, but not later than 30 days from the date of injury. If the employee is incapacitated, this action may be taken by someone acting on his or her behalf, including a family member, union official, or representative (the supervisor may provide such notice as well). The form must contain the original signature of the person giving notice. Upon completion of electronically filing, the supervisor should: Review the employee's portion of the form for completeness and accuracy, and assist the employee in correcting any deficiencies found;

(a) Complete and sign the second page of Form CA-1, including a telephone number in case OWCP staff has questions about the injury.

(b) Sign and return to the employee the receipt attached to Form CA-1 and give a copy of the entire form to the employee.

(c) Authorize medical care if needed.

(d) Inform the employee of the right to elect continuation of pay (COP), annual or sick leave if time loss will occur.

(e) Advise the employee whether COP will be controverted, and if so, whether pay will be terminated. The basis for the action must be explained to the employee.

(f) Advise the employee of his or her responsibility to submit original medical evidence of disability within 10 working days or risk termination of COP

(2) If the employee incurs medical expense or loses time from work beyond the date of injury, the supervisor should send Form CA-1 to the Human Resources Office with supporting information as soon as possible but no later than 5 working days after receipt of Form CA-1 from the employee.

(3) If the employee obtains no medical care, or obtains only agency-sponsored care on the date of injury, and no time loss is charged to either leave or continuation of pay, the supervisor should place Form CA-1 in the worker's Employee Medical Folder (EMF) instead of sending it to OWCP.

(4) If an employee requires medical treatment for the injury, the supervisor should complete the front form of the Authorization for Examination And/Or Treatment, Form CA-16 within four hours of the request whenever possible. If the supervisor doubts whether the employee's condition is related to the employment, he or she should so indicate on the form. Where there is no time to complete a Form CA-16, the supervisor may authorize medical treatment by telephone and send the completed form to the medical facility within 48 hours. Retroactive issuance of Form CA-16 is usually not permitted under other circumstances.

(5) Delayed Report of Injury. If an employee reported an injury several days after the fact, or did not request medical treatment within 24 hours of the injury, the supervisor may still authorize medical care using Form CA-16. Agency personnel are encouraged to use discretion in issuing authorizations for medical care under such circumstances, but employees should not be penalized for short delays in reporting injuries. The supervisor may, however, refuse to issue a CA-16 if more than a week has passed since the injury on the basis that the need for

immediate treatment would become apparent in that period of time. An employee may not use Form CA-16 to authorize his or her own treatment.

(6) Choice of Physician. The employee is entitled to select the physician who is to provide treatment. The provider must meet the definition of “physician” under the FECA and must not have been excluded from payment under the program. Physicians employed by or under contract to the agency may examine the employee at the agency’s facility in accordance with OPM regulations. However, the employee’s choice of physician must be honored, and treatment by the employee’s physician must not be delayed for the purpose of obtaining an agency-directed medical examination.

(7) Obtaining Treatment. Along with Form CA-16, the supervisor should give the employee Form OWCP-1500, which is used for billing. The physician should complete the reverse of Form CA-16 and the OWCP-1500 and forward them to OWCP; the supervisor may ask the physician for a copy of the report as well. The employee may be furnished transportation and/or reimbursed for travel and incidental expenses. OWCP generally considers 25 miles from the agency or the employee’s home a reasonable distance to travel for medical care unless appropriate care is not available within that radius.

(8) Further Referral. The original treating physician may wish to refer the employee for additional testing or specialized treatment. He or she may do so on the basis of the Form CA-16 already issued; it is not necessary to issue additional authorizations for treatment. Both the original physician and any physician to whom the employee is referred is guaranteed payment for 60 days from the date of issue of Form CA-16 unless OWCP terminates this authority at an earlier date. Treatment may continue at OWCP expense if the claim is approved. Should the employee wish to change physicians after the initial choice, he or she must contact OWCP in writing for approval and include the reasons for requesting the change.

c. Medical Reports—Attending Physician’s Report, Form CA-20 and Duty Status Report, Form CA-17. In cases sent to OWCP, a medical report from the attending physician is required. This report may be made on Form CA-16, part B, Attending Physician’s Report or on Form CA-20, which is attached to Form CA-7. It may also be made in narrative form on the physician’s letterhead stationery, or in the form of a hospital or health plan summary. The report should bear the physician’s signature or signature stamp. The supervisor should supply Forms CA-20 to the employee as often as needed. The original reports should be sent to OWCP. Agency personnel should use Form CA-17, Duty Status Report, to obtain interim medical reports about the employee’s fitness for duty; it may be issued initially with Form CA-16. The supervisor should complete the agency’s portion of the form by describing the physical requirements of the employee’s job and noting the availability of any light or limited duty. The physician should send the original Form CA-17 to the Human Resources Office and a copy to the district office. The supervisor may send Form CA-17 to the physician, by fax or mail, at reasonable intervals (but not more often than once a week) to monitor the employee’s medical status and ability to return to light or full duty.

d. Wage Loss/Permanent Impairment - Form CA-7. If disability is anticipated at the time of injury, the employee may elect to use leave or COP on Form CA-1. An employee who cannot return to work when COP ends, or who is not entitled to receive COP, may claim compensation for wage loss on Form CA-7.

(1) When to File. If it is not clear whether the employee will remain disabled after the 45 days of COP are used, he or she should initiate a claim for compensation. Supervisors should carry employees who have filed claims in LWOP status. If an employee returns to work after Form CA-7 has been filed, the supervisor should notify the Human Resources Office by telephone (so as to prevent overpayments), and later provide written confirmation of return to duty.

(2) Completion of Form. If compensation is to be claimed, the supervisor should give Form CA-7 to the employee on the 30<sup>th</sup> day of COP with instructions to complete the front and return the form to the agency within one week. (If the employee has not returned it by the 40<sup>th</sup> day of COP, the supervisor should contact him or her by telephone and ask for its submittal as soon as possible). The supervisor should also show the address of the Human Resources Office in the box on the reverse of the Form CA-20 which is attached to the claim form.

(3) When the form is returned, the supervisor should complete the reverse of the form, including the name and the telephone number of an agency official with direct knowledge of the claim.

e. The employee should arrange to provide medical evidence to support the period of disability claimed; this evidence may be submitted with the Form CA-7 or sent to OWCP separately.

f. The employee also needs to submit a completed Direct Deposit Sign-Up Form—SF 1199-A, and provide all military LESs for the year prior to the date of injury. After completing the form, the supervisor should send it to the Human Resources Office along with any new medical evidence in the agency’s possession. OWCP will use the pay data supplied by agency personnel to determine the rate at which compensation is to be paid. (Submittal should not be delayed for computation of shift differential, Sunday or holiday pay, or other incremental pay.) The dates of

compensation claimed should represent the period of disability supported by the medical evidence or the interval until the employee's next medical appointment.

g. **Leave Repurchase.** An employee who uses sick or annual leave to avoid interruption of income may repurchase that leave, subject to agency concurrence, if the claim is approved. Form CA-7 (along with Forms CA-7a and CA-7b) are used for this purpose. The employee and supervisor should supply the factual and medical evidence described above, and the supervisor should also provide a detailed breakdown of leave used, showing the number of hours charged for each day claimed and whether sick or annual leave was used.

h. **Lost Wages for Medical Treatment.** An employee who has returned to work but still requires medical treatment during work hours may claim compensation for lost wages while undergoing or traveling to and from the treatment. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. Such a claim may be made on Form CA-7, and it should be accompanied by a Form 7a from the supervisor showing the exact period of time lost due to the treatment and the number of hours or days the employee would have worked if available. Form CA-7 is used to claim schedule awards for permanent impairment.

## **5. Occupational Disease.**

a. **Notice of Occupational Disease and Claim for Compensation, Form CA-2.** The injured employee, or someone acting on his or her behalf, should give notice electronically of an occupational disease on Form CA-2. (Such notice may be provided by the supervisor as well.) The supervisor should issue to the employee two copies of the appropriate checklist, Form CA-35a-h, for the disease claimed. (To facilitate submittal of evidence, specific checklists have been devised for various conditions.) The supervisor should also explain the need for detailed information to the employee and advise him or her to furnish supporting medical and factual information requested on the checklist. If possible, this information should be submitted with the form. Upon notification, the supervisor should:

(1) Initiate CA-2 electronically.

(2) Review the front of the form for completeness and accuracy, and help the employee to correct any errors or omissions.

(3) Complete and sign the reverse of Form CA-2, and include a telephone number in case OWCP staff has questions about the claim.

(4) Sign and return to the employee the receipt attached to Form CA-2 and give a copy of the entire form to the employee.

(5) Review the employee's portion of the form and provide comments on the employee's statement.

(6) Advise the employee of the right to elect sick or annual leave or leave without pay, pending adjudication of the claim. The supervisor should submit completed Form CA-2 to HRO within 5 working days of receipt from the employee. It should not be held for receipt of supporting documentation.

b. **Medical Treatment Form CA-16.** Only rarely may employers authorize medical care in occupational disease claims. The supervisor must contact OWCP before issuing a Form CA-16.

c. **Claim for Compensation, Form CA-7 (due to Wage Loss/Permanent Impairment).** Form CA-7 is used to file a claim for compensation because of pay loss. The claim should be filed within 10 days after pay stops or when the employee returns to work, whichever occurs first.

d. **Leave Repurchase.** The employee may use sick or annual leave pending adjudication of the claim. If this is done, the employee may initiate repurchase of this leave, subject to agency concurrence, using Form CA-7 (along with Forms CA-7a and CA-7b). The supervisor should certify the amount and kind of leave used for each day claimed, and the employee should arrange to submit medical evidence supporting the period of repurchase requested.

e. **Lost Wages for Medical Treatment.** An employee who has returned to work but still needs medical treatment during work hours may claim compensation for lost wages while undergoing or traveling to and from the treatment. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. Such a claim may be made on Form CA-7, and it should be accompanied by a statement from the supervisor showing the exact period of time and the total amount of wages lost due to the treatment, as well as the rate of pay.

f. Form CA-7 is also used to claim continuing compensation and to initiate a claim for schedule award for permanent impairment resulting from occupational disease.

## 6. Electronic Data Interchange.

a. Electronic Data Interchange (EDI) is the technical solution that allows Federal Agencies to electronically submit completed CA-1 or CA-2 initiating claim forms to the Office of Workers' Compensation Programs.

b. The EDI Tracking System contains sensitive-restricted data such as social security number and work-related medical diagnosis' that is protected by the Privacy Act of 1974. Security features are an integral part of limiting the availability of this data to only those persons with a valid need to know.

### c. Supervisor View.

(1) This view allows the supervisor and employee to complete the initiating claim form without accessing the database. Once the claim form is submitted, the application then enters the information into the database. The supervisor may access the initiating claim forms by entering the following URL into the web browser address line: <https://icucweb.cpmosd.mil/cognos/cgi-bin/upfcgi.exe> then enter the word (in lowercase) **supervisor** in both User ID and Password areas

(2) Once the website is accessed, locate the Injury compensation tools menu and select the EDI Tool for Electronically Filing Workers' Compensation Claims. Once selected several website notifications will follow to include the final EDI application. The supervisor will then be requested to enter the injured employee's social security number, and date of birth to begin the claim process. The supervisor must also click on the appropriate button to indicate that the claim form being filed is either:

(a) CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.

(b) CA-2, Federal Employee's Notice of Occupational Disease or Illness and Claim for Compensation.

(4) Each field is color-coded to visually assist you with completing the on-line claim form.

(a) White data fields represent mandatory fields requiring user entry.

(b) Yellow data fields represent optional fields, and may be completed if appropriate.

(5) Once all white blocks and applicable yellow blocks have been completed, the "View Claim" button can be selected, providing the option to *View Claim for Printing and submit to ICPA* or *View Draft Copy to Verify Data*. Select one or the other, but ensure that you attain a copy of the form prior to submission.

d. Once the claim has been submitted, the original printed CA-1 or CA-2 must be signed by the injured employee, supervisor and witness (if applicable).

e. A copy must be made for the employee and supervisor. The original CA-1 or CA-2 is then forwarded to HRO with any medical reports available.

## 7. Recurrences.

a. A recurrence of medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.

b. Notice of Recurrence, Form CA-2a (not filed electronically). If a recurrence of disability develops, the employee and supervisor should complete Form CA-2a and submit it to OWCP. If the employee was entitled to use COP and the 45 calendar days of COP have not been exhausted, he or she may elect to use the remaining days if 45 days have not elapsed since first return to duty. Otherwise, the employee may elect to use sick or annual leave pending adjudication of the claim for recurrence. The employee should arrange for submittal of the factual and medical evidence described in the instructions attached to the form, paying particular attention to the need for "bridging" information which describes his or her condition and job duties between the original injury and the recurrence.

c. Medical Treatment. Ordinarily, no medical treatment is authorized at OWCP expense until a claim for recurrence is accepted. At its discretion the district office may, however, authorize an emergency medical examination without Form CA-2a.

d. Continuing a Claim for Compensation, Form CA-7 (due to Wage Loss/Permanent Impairment). Form CA-7 is used to file a claim for continuing compensation due to a recurrence. During the period of disability, a new Form CA-7 should be submitted every two weeks absent other instructions from OWCP.

## 8. Death.

a. When an employee dies because of an injury incurred in the performance of duty, the supervisor should immediately notify HRO by telephone or facsimile message. An HRO representative will contact any survivors, provide them with claim forms, and help them prepare the claim. The forms should be submitted to OWCP even if a

disability claim was previously filed and benefits were paid. Continuation of benefits is not automatic, as it must be shown that the death resulted from the same condition for which the disability claim was accepted.

b. Claims for Death Benefits Forms CA-5 and CA-5b. The survivors of a deceased employee should use Form CA-5 or CA-5b to submit claims for death benefits. The survivor should complete the front of the appropriate form, while the attending physician should complete the medical report on the reverse and forward it to OWCP. The submittal should include a copy of the death certificate. It should also include a copy of the marriage certificate if a spouse is making claim, and a copy of any divorce or annulment decree if the decedent or spouse was formerly married. The submittal should include copies of birth certificates of any children for whom claim is made.

c. Agency Notice Form CA-6. The supervisor uses this form to report the work-related death of an employee.

## **9. Conditions of Coverage.**

a. Provisions of the Law. All cases must first satisfy the statutory time requirements of the FECA. For injuries and deaths on or after September 7, 1974, the law provides that a claim for compensation must be filed within three years of the injury or death. Even if claim is not filed within three years, however, compensation may still be allowed if written notice of injury was given within 30 days or the immediate superior had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification; an entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the agency on notice of a possible work-related injury or illness.

b. When Time Begins to Run. For traumatic injury, the statutory time limitation begins to run from the date of injury. For a latent condition, it begins to run when an injured employee who has a compensable disability becomes aware, or reasonably should have been aware, of a possible relationship between the medical condition and the employment. Where the exposure to the identified factors of employment continues after this knowledge, the time for filing begins to run on the date of the employee's last exposure to those factors.

c. Written Notice. Form CA-1 or CA-2 constitutes notice of injury. A claim for compensation (Form CA-7 in disability cases, CA-5 or CA-5b in death cases) may also constitute notice of injury. OWCP will also accept as a notice of injury or death any written statement which is signed by the person claiming benefits, or someone acting on his or her behalf, and which states the name of the employee; the name and address of the person claiming benefits; the time and location of the injury or death; and the cause and nature of the injury or death.

d. Actual Knowledge. An agency official may acquire actual knowledge through firsthand observation of the incident, from another employee, or from medical personnel at the agency's medical facility. This knowledge must place the employing agency reasonably on notice of an on-the-job injury or death. An entry into the employee's medical records may be considered actual knowledge, as may the results of tests conducted by agency personnel in connection with known occupational hazards. The date on which the agency or OWCP receives written notice will be considered the date of filing. OWCP will request information addressing the issue of actual knowledge only where the agency did not receive written notice within three years.

## **10. Civilian Employee.**

a. If the claim is timely filed, it must be determined whether the injured or deceased individual was an employee within the meaning of the law. This is always the second requirement considered.

b. Provisions of the Law. The FECA covers all civilian Federal employees except for non-appropriated fund employees. In addition, special legislation provides coverage to Peace Corps and VISTA volunteers; Federal petit or grand jurors; volunteer members of the Civil Air Patrol; Reserve Officer Training Corps Cadets; Job Corps and Youth Conservation Corps enrollees; and non-Federal law enforcement officers under certain circumstances involving crimes against the United States.

c. Other Considerations. Temporary employees are covered on the same basis as permanent employees. Contract employees, volunteers, and loaned employees are covered under some circumstances; such determinations must be made on a case-by-case basis once a claim is filed. Federal employees who are not citizens or residents of the United States or Canada are covered subject to certain special provisions governing their pay rates and computation of compensation payments.

## **11. Fact of Injury.**

If the issues of "time" and "civil" employee (as defined above) have been resolved affirmatively, it must be established whether the employee in fact sustained an injury or disease. Two factors are involved in this determination:

a. Occurrence of Event. Whether the employee actually experienced the accident, event, or employment factor which is alleged to have occurred. This is resolved on the basis of factual evidence, including statements from the employee, the supervisor, and any witnesses. An injury need not be witnessed to be compensable. A supervisor who believes, however, that the employee's testimony is contrary to the facts should supply pertinent information to support this belief.

b. Existence of Medical Condition. Whether the accident or employment factor resulted in an injury or disease. This is determined on the basis of the attending physician's statement that a medical condition is present that could be related to the incident, though the medical report need not relate the condition to the incident. Simple exposure, for instance to a contagious condition or dusty environment, does not constitute an injury.

## **12. Performance of Duty.**

a. Agency Premises. An employee who is injured on agency premises during working hours has the protection of the FECA unless engaged in an activity which removes him or her from the scope of employment. Coverage includes injuries which occur while the employee was performing assigned duties or engaging in an activity which was reasonably associated with the employment. Such activities include use of facilities for the employee's comfort, health, and convenience as well as eating meals and snacks provided on the premises. The premises include areas immediately outside the building, such as steps or sidewalks, if they are federally owned or maintained. The supervisor should document an injury occurring in such an area by submitting a diagram showing where it happened.

b. Outside Working Hours. Coverage is extended to employees who are on the premises for a reasonable time (usually considered 30 minutes) before or after working hours. It is not extended, however, to employees who are visiting the premises for non-work-related reasons. The supervisor should verify the time of the injury and provide any information it has about the employee's purpose in being on the premises at the time of injury.

c. Representational Functions. Injuries to employees performing representational functions entitling them to official time are covered. Injuries to employees engaged in the internal business of a labor organization, such as soliciting new members or collecting dues, are not covered. The supervisor should advise whether the employee was entitled to official time when injured.

d. Parking Facilities. The agency's premise includes the parking facilities which it owns, controls, or manages. An employee will usually be covered if injured on such parking facilities. Information submitted by the supervisor should include a statement indicating whether it owns or leases the parking lot, and if the latter, the name and address of the owner (this information may be needed for purposes of developing the third-party aspect of the claim. If the parking lot is not immediately adjacent to the building, the supervisor should also supply a diagram showing where the injury took place in relation to the parking lot and building.

e. Off-Premises Injuries. Coverage is extended to workers such as letter carriers, chauffeurs, and messengers who perform service away from the agency's premises. It is also extended to workers who are sent on errands or special missions and workers who perform services at home.

f. To and From Work. Employees do not have the protection of the FECA when injured en route between work and home, except where the agency furnishes transportation to and from work, the employee is required to travel during a curfew or an emergency, or the employee is required to use his or her vehicle during the workday. Such claims should be accompanied by a description of the circumstances.

g. Lunch Hour. Injuries which occur during lunch hour off the premises are not ordinarily covered unless the employee is in travel status or is performing regular duties off premises.

h. Travel Status. Employees in travel status are covered 24 hours a day for all reasonable incidents of their temporary duty. Thus, an employee injured on a sightseeing trip in the city to which he or she was assigned would not be covered, while an employee injured while taking a shower in the hotel would be covered. All claims for injuries occurring in travel status should be accompanied by a copy of the travel authorization.

i. Vehicular Accidents. Any claim involving a traffic accident should be accompanied by a copy of the police report, if any, and a diagram or map showing the location of the accident in relation to the places where official duty was last performed and next scheduled.

j. Other Factors. Some injuries occur under circumstances which are not governed, or not completely governed, by the premises rules. Injuries involving any of the circumstances indicated below must be determined on a case-by-case basis.

(1) Horseplay. An employee who is injured during horseplay is covered if the activity was one which could reasonably be expected where a group of workers are closely associated for extended periods of time. In this kind of case, it must be determined whether the specific activity was a reasonable incident of the employment or whether it was an isolated event which could not reasonably have been expected to result from close association.



(2) Assault. An injury or death caused by the assault of another person may be covered if it is established that the assault was accidental and arose out of an activity directly related to the work or work environment. Coverage may also be extended if the injury arose out of a personal matter having no connection with the employment if it was materially and substantially aggravated by the work association. The supervisor should submit copies of reports of any internal or external investigation as well as witness statements from parties with knowledge of the incident.

(3) Emergencies. Coverage is extended to employees who momentarily step outside the sphere of employment to assist in an emergency, such as to extinguish a fire or help a person hit by a car.

### **13. Causal Relationships.**

a. This factor is based entirely on medical evidence provided by physicians who have examined and treated the employee. Opinions of the employee, supervisor or witness are not considered, nor is general medical information contained in published articles.

(1) Kinds of Causal Relationship. An injury or disease may be related to employment factors in any one of four ways:

(a) Direct Causation. This term refers to situations where the injury or factors of employment result in the condition claimed through a natural and unbroken sequence.

(b) Aggravation. If a pre-existing condition is worsened, either temporarily or permanently, by a work-related injury, that condition is said to be aggravated.

(c) Temporary aggravation involves a limited period of medical treatment and/or disability, after which the employee returns to his or her previous medical status. Compensation is payable only for the period of aggravation established by the medical evidence, and not for any disability caused by the underlying disease. This is true even if the employee cannot return to the job held at time of injury because the pre-existing condition may be aggravated again. For example, if exposure to dust at work temporarily aggravates an employee's pre-existing allergy, compensation will be payable for the period of work-related disability but not for any subsequent period, even though further exposure in the work place may cause another aggravation.

(d) Permanent aggravation occurs when a condition will persist indefinitely due to the effects of the work-related injury or when a condition is materially worsened by a factor of employment such that it will not return to the pre-injury state.

(2) Acceleration. A work-related injury or disease may hasten the development of an underlying condition, and acceleration is said to occur when the ordinary course of the disease does not account for the speed with which a condition develops.

(3) Precipitation. This term refers to a latent condition which would not have manifested itself on this occasion but for the employment. For example, an employee's latent tuberculosis may be precipitated by work-related exposure.

(4) Medical Evidence. The issue of causal relationship almost always requires reasoned medical opinion for resolution. This opinion must come from a physician who has examined or treated the employee for the condition claimed. Where a pre-existing condition involving the same part of the body is present, the physician must provide rationalized medical opinion which differentiates the effects of the employment-related injury or disease from the pre-existing condition. Such evidence will permit the proper kind of acceptance (temporary vs. permanent aggravation, for instance).

b. To establish causal relationship, additional medical opinion may be requested of OWCP's District Medical Director/Adviser or from a specialist in the medical field pertinent to the injury or disease. In a claim for a psychiatric condition, a report from a psychiatrist or clinical psychologist will be required. In claims for hearing loss and pulmonary disease, OWCP will refer the employee for examination by an appropriate specialist after exposure to the hazardous condition or substance has been established.

c. Consequential and Intervening Injuries. Sometimes an injury occurring outside the performance of duty affects the compensability of a work-related injury.

(1) A consequential injury is a new injury which occurs as the result of a work-related injury (for example, because of weakness or impairment caused by a work-related injury). Included in this definition are injuries sustained while obtaining medical care for a work-related injury. Consequential injuries are compensable.

(2) An intervening injury is one which occurs outside the performance of duty to the same part of the body originally injured. The resulting condition will be considered related to the original injury unless the second injury and any other factors unrelated to the original injury are established as its cause.

#### **14. Statutory Exclusions.**

Sometimes the circumstances of a case raise the issues of willful misconduct, intention to bring about the injury or death of oneself or another, or intoxication. If any of these factors is the cause of the injury or death, benefits are denied. The Agency or OWCP staff must assert and prove these factors.

a. **Willful Misconduct.** The question of deliberate willful misconduct may arise when the employee violated a safety rule, disobeyed orders of the employer, or violated a law. Because safety rules have been established for the protection of the worker rather than the employer, simple negligent disregard of such rules is not sufficient to deprive an employee or beneficiary of entitlement to compensation. Disobedience of such orders may destroy the right to compensation only if the disobedience is deliberate and intentional as distinguished from careless and heedless.

b. **Intoxication.** In any case involving intoxication (whether by alcohol or illegal drugs), the record must establish both the extent to which the employee was intoxicated at the time of the injury and the particular manner in which the intoxication caused the injury. It is not sufficient just to show that the employee was intoxicated; it must be shown that the intoxication proximately caused the injury. This requirement does not, however, provide agency personnel with any additional authority to test employees for drug use beyond that which may exist under other statutes or regulations.

c. **Intent to Bring About Injury or Death to Oneself or Another.** Where it appears that the employee brought about his or her own injury or death, or that of another, intent must be established. If the factual and medical evidence show that the employee was not in full possession of his or her faculties, the injury may be compensable. Thus, suicide may be compensable if the injury and its consequences directly caused a mental disturbance or physical condition which produced a compulsion to commit suicide and prevented the employee from exercising sound discretion or judgment so as to control that compulsion.

#### **15. Processing Claims. Administrative Matters.**

a. **Initial Handling.** The notice of traumatic injury, occupational disease or death should be filed with the district office with jurisdiction over the location of the employing agency. (After adjudication, the claim may be transferred to the district office with jurisdiction over the location of the employee's residence, if different.) When possible, the notice should be accompanied by supporting documents such as medical reports and statements from the employee, the supervisor, and witnesses. However, submittal of claim forms should not be delayed pending receipt of the supporting documents. When the notice is received, OWCP will send the employee and the supervisor a postcard (Form CA-801) advising the claim number assigned to the case.

b. OWCP will administratively close un-controverted claims with medical bills totaling less than \$1500, no claim for compensation benefits, and no potential third-party liability after payment of any outstanding medical bills. Claims not meeting these criteria will be assigned to a Claims Examiner for formal adjudication, as will those which pass the \$1500 threshold for medical bill payment.

c. The Claims Examiner will determine if information in addition to the initial submittal is required to adjudicate the claim. If so, the information will be requested of the employee and/or the supervisor with a copy to all parties to the claim. While the requirements for accepting a claim are considered in the order shown in the previous chapter, OWCP will attempt to request information on all unresolved aspects of the claim at the same time in the interests of efficient case handling.

d. **Obtaining Information.** Most routine requests for information are conveyed by mail. Under the Privacy Act, the employee or representative is entitled to receive one copy of the case file from OWCP free of charge; additional copies will be sent at a cost of \$.10 per page. It is not necessary to request the records under the Freedom of Information Act.

e. Ordinarily, a complete copy of the record is sent directly to the requestor; occasionally, if sensitive medical information is involved, OWCP will forward the medical reports to a physician of the employee's choice so that the contents may be properly interpreted to the employee. Sensitive medical information may be sent to the employee's representative, with the proviso that it not be disclosed to the employee without the attending physician's permission.

f. **Conferencing.** Telephone conferences conducted by a Senior Claims Examiner are often held in cases involving complicated adjudicatory and case management issues. Conferences may be used to address the agency's controversy; the occurrence of an injury as claimed; the occurrence of an injury in performance of duty; occupational disease cases involving voluminous factual evidence or complex determinations; overpayments; and return-to-work efforts. Conferences may also be held where the employee is not able to express himself or herself well in writing.

g. A representative of the employing agency may be asked to participate in such a conference, either with the Senior Claims Examiner alone or together with other parties to the claim. After the conference, the Senior Claims Examiner completes a Memorandum of Conference which describes what each party said, then asks the participant(s) to provide any comments on this document within 15 days (except that comments are not requested if the decision is found in favor of the party conference). The Senior Claims Examiner then makes findings on the issue for resolution and issues a decision.

h. Representation. The FECA provides that an employee may be represented if he or she so desires, but it is not required. A representative need not be an attorney; a union representative, family member or friend, for example, may act in this capacity. A Federal employee may act as a representative only for an immediate family member or in the capacity of a union representative. The employee must designate any representative in writing before OWCP will recognize him or her, and there can be only one representative at a time.

i. Third Party. When a party other than the injured employee or another employee of the agency appears to be responsible for an injury or death, OWCP may ask the employee to seek damages from that party, which may be an individual, a company, or a product manufacturer. OWCP encourages supervisors to investigate the third-party aspect of any claim and submit all information gathered. OWCP will contact the employee with specific instructions about this aspect of the claim; he or she should not attempt to settle such a claim without first obtaining advice and approval from the Solicitor of Labor through OWCP.

j. While a claim is pending against the third party, OWCP will pay medical and compensation benefits to which the beneficiary is entitled. If a recovery is made, the beneficiary must first pay outstanding legal fees and costs. He or she is then entitled to retain 20 percent of the remaining amount, plus an amount equivalent to a reasonable attorney's fee in proportion to the sum which will be owed to OWCP. The latter amount generally includes the total medical and compensation payments made by OWCP up to the time of settlement. The beneficiary retains any money remaining, which is credited against future claims for benefits. OWCP will resume payment of compensation benefits and medical bills only after the beneficiary has submitted claims which equal the amount of money remaining.

## **16. Burden of Proof.**

a. The employee is responsible for establishing the essential elements of the claim. OWCP will help the employee to meet this responsibility, which is termed burden of proof, by requesting evidence needed to establish these elements if such information is not included with the original submittal. OWCP will try to obtain any pertinent medical evidence in the possession of another Federal facility, including the employing agency, but this assistance does not relieve the employee of his or her burden of proof. Agencies are required by law to provide medical and factual evidence requested by OWCP to adjudicate a claim. Agencies and employees are always entitled to present information not specifically requested by OWCP. When information is not submitted in a timely manner, delays in adjudicating cases and paying claims often result. To minimize such delays, OWCP will ask the employee and supervisor to submit the required evidence within a specific period, usually 30 days from the date of the request. A copy of any request to the supervisor for information will be sent to the employee, and vice versa.

b. Traumatic Injury Cases (Including Recurrence and Death). The factual evidence required from an employer in a traumatic case often concerns the circumstances of the injury. By anticipating the information that OWCP will need, as described in the preceding chapter, supervisors contribute to the efficient handling of the claim. Each submittal of forms should contain a clear description of how the injury occurred, including the time and place, whether it happened during working hours, the presence of witnesses, etc.

(1) Medical evidence in possession of the agency may also be requested.

(2) Information needed to make payment will usually include the employee's salary and the days of LWOP claimed. Agencies can speed payment by advising OWCP if the pay rate includes elements of pay such as night and Sunday differential. If so, OWCP will need to know whether the employee has received the increments regularly (in which case the biweekly amount should be stated) or sporadically (in which case the employee's entire earnings in the relevant pay category for the year preceding the injury should be stated).

c. Occupational Disease Claims (Including Recurrence and Death).

(1) OWCP's requirements for factual information vary according to the type and severity of the medical condition involved. Simple occupational disease claims, for example a claim for poison ivy where the job duties involved exposure to the plant, and the medical evidence confirmed the diagnosis, require less evidence to adjudicate. The information specified in the instructions on Form CA-2 and on the evidence checklist appropriate to the disease in question should be sent with the initial submittal. If sufficiently detailed descriptions of how the condition developed are not received, OWCP will request the information needed for adjudication. If the information is not received, OWCP will process the case on the basis of the evidence submitted by the employee.

As with traumatic injury cases, if that evidence is sufficient and/or credible, OWCP will accept the employee's statements and adjudicate the case accordingly. If the evidence is not sufficient and/or credible, OWCP will deny the case because one or more of the five basic elements required to approve a case has not been established.

(2) An agency medical facility sometimes provides medical examination and treatment. If additional evidence about such treatment is needed from the agency, OWCP will advise the employee that OWCP is attempting to obtain it, but that the burden of proof still rests upon the employee and that he or she should also try to obtain that evidence.

(3) As with traumatic injury cases, payment information needed from the agency will likely include the employee's pay rate and the days of LWOP claimed, and OWCP will use the procedures described above for obtaining such information in traumatic injury cases. The medical evidence developed for initial adjudication should provide sufficient information about the nature and extent of disability to permit adjudication of the claim for wage loss. If not, OWCP will follow the procedures for developing medical evidence for wage-loss claims in traumatic injury cases.

#### **17. Questionable Cases.**

If the supervisor questions the validity of a claim, he or she should investigate the circumstances and report the results to OWCP. All such allegations must be supported by specific factual evidence. Situations which may prompt the supervisor to conduct such an investigation, and actions which the agency may take, are as follows:

a. Differing Versions. If the employee has given differing versions of the incident to different people, or several witnesses give differing accounts of the facts surrounding the injury, the supervisor should request a written statement from each person which details his or her knowledge of the situation.

b. Previous Injury. If the employee reported to work on the date of the claimed injury with the appearance of a pre-existing condition or injury, the agency should obtain statements from witnesses which detail the relevant observations.

c. Time Lags. If an injury is reported long after its alleged occurrence, and the employee appears to be able to perform normal duties, a written statement detailing the situation should be composed.

d. Other Employment. If an employee who has claimed injury is reported to be working at another job, the supervisor should first ask him or her about the requirements of the other employment. Depending on the reply, the supervisor may wish to ask the employee for permission to contact the other employer for information about duties and periods of work.

#### **18. Decisions and Notifications.**

If disability is expected to occur or continue, OWCP will notify the employee by letter that his or her case is accepted. The letter will state the medical condition for which the claim is accepted and advise how to claim compensation benefits and obtain payment or reimbursement of medical bills. During the life of a claim, decisions may be rendered on various issues. OWCP usually advises employees by letter about such matters as approval or denial of surgical procedures and other forms of medical care, and payment of medical bills. Appeal rights are not usually included in such notifications, but OWCP will issue formal decisions on such matters if requested. Any determination that sets forth OWCP's findings in the case and includes a description of the employee's appeal rights is known as a formal decision. OWCP issues a formal decision whenever it reaches an adverse decision about entitlement, such as denial of an initial claim or denial of continuing benefits. Three avenues of appeal are provided for employees (the agency is not entitled to appeal). The employee may request only one form of appeal at a time.

a. Hearing. The employee is entitled to either an oral hearing before an OWCP representative or a review of the written record (but not both), as long as written request is made within 30 days of the formal decision and a reconsideration has not already been requested. The employee may request a change of format under certain circumstances.

b. Reconsideration. The employee may ask OWCP to reconsider a formal decision made by the district office. The request should be addressed to the district office; no special form is required, but the request should clearly state the grounds on which it is based. It must be accompanied by relevant evidence not previously submitted or arguments for error in fact or law in reaching the contested decision. A reconsideration must be requested within one year of the date the contested formal decision was issued.

c. Review by Employees' Compensation Appeals Board (ECAB). An employee may request review by the ECAB, which is the highest authority in Federal workers' compensation claims. The employee should file for such review directly with the ECAB at the address shown in the formal decision. The ECAB's review is based solely upon the case record at the time of the formal decision; new evidence is not considered.

## **19. Continuation of Pay.**

### **a. Entitlement.**

(1) The FECA provides that an employee's regular pay may continue for up to 45 calendar days of wage loss due to disability and/or medical treatment after a traumatic injury. The intent of this provision is to avoid interruption of the employee's income while the case is being adjudicated. COP is not considered compensation and is therefore subject to the usual deductions from pay, such as income tax and retirement allotments. After entitlement to COP ends, the employee may apply for compensation or use leave.

(2) An employee is entitled to receive COP when he or she is absent from work due to disability or medical treatment, or when he or she is reassigned by formal personnel action to a position with a lower rate of pay due to partial disability. Because informal assignment to light or limited duties without a personnel action does not result in pay loss, time worked in such a position may not be charged to COP. However, an employee whose work schedule is changed, so that a loss of salary or premium pay (e.g., holiday pay or night differential, though not Sunday pay) results, is entitled to COP for such wage loss whether or not the schedule was changed by a formal personnel action.

(3) Temporary employees are entitled to COP on the same basis as permanent employees. If a termination date has been set for an employee prior to the injury, however, COP need not be continued past the date of termination as long as Form SF-52 showing the date of termination has been completed. In this instance, OWCP will pay compensation to a disabled worker after employment has ceased. Like any other employee, a temporary worker who first reports a traumatic injury after employment ends is not entitled to COP.

### **b. Use of Leave Instead of COP.**

(1) An employee may use annual or sick leave to cover all or part of an absence due to injury. If an employee elects to use leave, each full or partial day for which leave is taken will be counted against the 45 days of entitlement to COP. Therefore, while an employee may use COP intermittently along with sick or annual leave, entitlement is not extended beyond 45 days of combined absences.

(2) An election of sick or annual leave during the 45-day period is not irrevocable. If an employee who has elected leave later wishes to elect COP, the supervisor must make such a change on a prospective basis from the date of the employee's request. Where the employee wishes to have leave restored retroactively, the supervisor must honor the request, provided he or she receives prima facie medical evidence of injury-related disability for the period in question.

c. An agency's objection to paying COP for one of the reasons provided by regulation is called controversy. The supervisor may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed supporting information to OWCP. Even though a claim is controverted, the agency must continue the employee's regular pay unless at least one of the following conditions applies:

(1) The disability is a result of an occupational disease or illness.

(2) The employee is neither a citizen nor a resident of the United States, Canada, or the territory under the administration of the Panama Canal Commission (i.e., a foreign national employed outside these areas).

(3) The injury occurred off the employing agency's premises and the employee was not engaged in official "off-premises" duties.

(4) The employee caused the injury by his or her willful misconduct, or the employee intended to bring about his or her injury or death or that of another person, or the employee's intoxication was the proximate cause of the injury.

(5) The injury was not reported on a form approved by OWCP (usually Form CA-1) within 30 days of the injury.

(6) Work stoppage first occurred more than 45 days after the injury.

(7) The employee first reported the injury after employment was terminated.

## **20. Pay Rate for COP Purposes.**

a. An employee's regular pay is his or her average weekly earnings, including night or shift differential and various kinds of premium pay (but not Sunday pay). It also includes other extra pay, such as pay authorized by the Fair Labor Standards Act for employees who receive annual premium pay for standby duty and who also earn and use leave on the basis of their entire tour of duty, including periods of standby duty. Overtime pay is not included except for administratively uncontrollable work covered under 5 U.S.C. 5545 (2).

b. Standard Tour of Duty. For a full-time or part-time worker, either permanent or temporary, who works the same number of hours per week, the weekly pay rate equals the number of hours regularly worked each week times the hourly pay rate on the date of injury, excluding overtime.

c. **Non-standard Tour of Duty.** For a part-time worker, either permanent or temporary, who does not work the same number of hours per week, the weekly pay rate equals the average weekly earnings for the year prior to the date of injury, excluding overtime.

d. **Intermittent Work.** For an intermittent or part-time worker, either permanent or temporary, who does not work each week of the year (or the period of appointment), the weekly pay rate equals the average of the employee's weekly earnings during the year before the injury. The pay rate is computed on the basis of the total earnings divided by the number of weeks worked (partial weeks worked are counted as whole weeks). The annual earnings used for this computation must not be less than 150 times the average daily wage earned within one year before the date of injury (the daily wage is the hourly rate times eight).

e. **Increments of Pay.** Night or shift differential as well as holiday or other extra premium pay (except for Sunday pay) should be included, but overtime pay may not be considered.

f. **Changes in Pay.** Changes in pay due to within-grade increases or promotions, demotions, terminations of temporary details, etc. which would have occurred but for the injury are included in COP since COP represents salary and not compensation. Moreover, an employee who moves into a higher-paying job during the COP period is entitled to receive COP at the higher rate of pay. Where the weekly COP rate is based on the employee's average weekly earnings during the year prior to the date of injury, the COP rate should be changed by the same percentage as the change in hourly pay or salary.

g. **Lost Elements of Pay.** An element is sometimes lost due to the effects of the injury. For instance, a night shift worker may be reassigned to the day shift to perform light duty, and thus lose night differential. In such instances COP should be granted for the lost element of pay. Each day for which COP is granted to cover a lost element of pay will count as one full day of COP.

## **21. Computation.**

a. Unless the injury occurs before the beginning of the workday, time loss on the date of injury should be charged to administrative leave. The period to be charged to COP begins with the first day or shift of disability or medical treatment after the date of injury, provided that the absence began within 45 days after the injury. COP should be charged for weekends and holidays if the medical evidence shows the employee was disabled on the days in question. For example, if the physician states that disability will continue only through Saturday for an employee who has Saturday and Sunday off, COP will be charged only through Saturday.

b. If work stoppage occurs for only a portion of a day or shift, a full day of COP will be counted toward the 45-day entitlement, even though the employee is not entitled to COP for the entire day or shift. For example, if an employee who has returned to work must lose three hours to obtain physical therapy for the effects of the injury, he or she is entitled to only three hours of COP even though one full day will be counted. If the employee is absent for all or part of the remaining workday, the time loss should be covered by leave, LWOP, AWOL, etc., as appropriate, since absence beyond the time needed to obtain the physical therapy cannot be charged to COP.

## **22. Light or Limited Duty Assignments.**

a. When the physician's report shows that the employee is no longer totally disabled, he or she is required to accept any reasonable offer of suitable light or limited duty. Such an offer may be made by telephone but must be confirmed in writing within 48 hours to be valid. The offer should include a description of the duties and requirements of the offered position. If a personnel action is involved, the employee must be furnished with a copy of it prior to the effective date.

b. COP should be paid if the employee has been assigned light or limited duty by formal personnel action and pay loss results (e.g., the employee is placed in a light duty position at lower pay). The dollar amount of COP will be the difference between the pay rates of the job held on date of injury and the light- or limited-duty position. One full day of COP should be charged for each day of light duty, even though the employee is working a full shift. COP should also be paid if the light or limited duty consists of work at regular duties for fewer than the usually scheduled number of hours. COP should also be paid if the light or limited duty consists of work at regular duties for fewer than the usually scheduled number of hours.

c. If the employee refuses to accept the work offered, COP should be terminated as of the date of the employee's refusal or after five workdays from the date of the offer, whichever is earlier. OWCP will then determine entitlement based on the medical reports and the duties of the offered position and issue a formal decision concerning payment of COP.

### **23. Recurrences.**

In many cases, an employee will return to work without using all 45 days of entitlement of COP. Should such an employee suffer a recurrence of disability, he or she may use COP if no more than 45 days have elapsed since the date of first return to work, including part-time work and light or limited duty. If the recurrence begins later than 45 days after the first return to work, the agency should not pay COP even though some days of entitlement remain unused. A period which begins before the 45-day deadline and continues beyond it may be charged to COP as long as the period of time is uninterrupted.

### **24. Terminating COP.**

COP should not be stopped unless:

a. Medical Evidence is Not Submitted Within 10 Workdays. This period should be counted from the date the employee claims COP or the disability begins (or recurs), whichever is later. If the agency has not received prima facie medical evidence of injury-related disability within that period, it may stop COP.

b. The Employee is No Longer Disabled. The agency should terminate COP if: it receives medical information from the attending physician stating that the employee is no longer disabled for regular work; a partially disabled employee returns to full-time light or limited duty with no pay loss; or the employee refuses a suitable offer of light- or limited- duty work.

c. OWCP Notifies the Agency That Pay Should be Terminated.

d. The 45-Day Period Expires.

### **25. Medical Benefits Entitlement.**

a. The FECA at 5 U.S.C. 8103 authorizes medical services for treatment of any condition which is causally related to factors of Federal employment. No limit is imposed on the amount of medical expenses or the length of time for which they are paid, as long as the charges represent the reasonable and customary fees for the services involved and the need for the treatment can be shown.

b. Federal employees are entitled to all services, appliances, and supplies prescribed or recommended by qualified physicians who, in the opinion of OWCP, are likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation. Medical care includes examination, treatment, and related services such as medications and hospitalization, as well as transportation needed to secure these services. Preventive care may not be authorized, however.

### **26. Definition of Physician.**

a. The term "physician" includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by State law. Naturopaths, faith healers, and other practitioners of the healing arts are not recognized as physicians within the meaning of the law.

b. Chiropractors. Under the FECA, the services of chiropractors may be reimbursed only for treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. The term "subluxation" is defined as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any X-ray film to individuals trained in the reading of X-rays. Chiropractors may interpret their own X-rays, and if a subluxation is diagnosed, OWCP will accept the chiropractor's assessment of any disability caused by it.

c. Excluded Physicians. The term "qualified physician" does not include those whose licenses to practice medicine have been suspended or revoked by a state licensing or regulatory authority or who have been excluded from payment under the FECA.

### **27. Choice of Physician.**

a. Initial Choice. An employee is entitled to initial choice of physician for treatment of an injury. He or she may choose any licensed physician in private practice who is not excluded, or he or she may choose to be treated at a government medical facility if one is available. Such facilities include hospitals of the Army, Navy, Air Force, and Department of Veterans Affairs and their medical officers. Agency personnel may not interfere with the employee's right to choose a physician, nor may they require an employee to go to a physician who is employed by or under contract to the agency before going to the physician of the employee's choice. Agency personnel may contact the attending physician only to obtain additional information about or clarify the employee's duty status or medical progress, and only in writing.

b. Referral by Attending Physician. The attending physician may engage the services of facilities which provide X-ray or laboratory services, or the services of specialists who can provide consultation. Charges for such services will usually be paid on the basis that the attending physician requested them.

c. Change of Physician. Except for a referral made by the attending physician, any change in treating physician must be authorized by OWCP. Otherwise, OWCP will not pay for the treatment. The employee should request any such change in writing and explain the reasons for the request. If a physician chosen by an employee is later excluded from participation under the regulations, the employee should choose another physician. Otherwise, and upon notification by OWCP, he or she will be liable for payment of the bills from the excluded provider.

d. Transfer of Medical Care. The agency does not have authority to transfer medical care from one physician to another. If adequate medical care is not available locally or it appears that transfer of medical care is advisable for other reasons, the agency must contact OWCP for instructions.

## **28. Payment of Bills.**

a. OWCP will pay for or reimburse only those services rendered for work-related injuries. Documentation usually takes the form of a report or clinical notes from the physician, or a copy of the discharge summary from a hospital.

b. Forms. Most providers must submit their bills on the American Medical Association (AMA) Standard Health Insurance Claim Form (HCFA-1500). A version of the form which includes instructions for submitting bills to OWCP carries the form number OWCP-1500. In some states the local version of the form may not be designated "HCFA-1500" or may differ from the standard AMA form in other ways. Such local variations are acceptable if they are otherwise complete.

c. Requirements. To be accepted for payment, the bill must include the following information at a minimum:

- (1) Employee's name.
- (2) Provider's name and address.
- (3) Diagnosis.
- (4) Itemized list of services, with charges.
- (5) Tax identification number (the provider's Employer Identification Number or Social Security

Number).

d. Itemization. All bills must be sufficiently itemized to allow for evaluation of the charges. The Current Procedural Terminology (CPT) code for each medical, surgical, X-ray or laboratory service should be shown on the HCFA-1500, and bills should state the dates on which the services or supplies were furnished. Individual dates are not necessary if the bill is for repetitive charges over a period of time. In such cases the billing should show the beginning and ending dates of service, and the number of units of service.

e. Time Limitation on the Payment of Bills. No bill will be paid unless it is submitted to OWCP on or before December 31<sup>st</sup> of the year following the calendar year in which the expense was incurred or the claim (or specific condition, as appropriate) was first accepted as compensable by OWCP, whichever is later.

f. Disallowance of Charges. Unless the amount involved is minor, OWCP will advise the payee fully of any adjustments to the bill by letter which explains the amount of the deletion or reduction, the particular charge affected, the reasons for the action, and the amount for which the bill is being approved. If a bill is reduced because the charges exceed the amount allowed by the OWCP fee schedule, a separate notice will be issued.

g. Reimbursement. An employee may request reimbursement by submitting either receipted bills from the provider or a completed HCFA-1500 signed by the provider. Hospital bills must be stamped "paid" or otherwise certified to show that payment was made. Cash sales receipts that bear imprints of mechanical cash registers may be accepted if the nature of the sale is identified. Photocopies of cancelled checks may be accepted in lieu of receipts but must be accompanied by itemized bills or other evidence of the charge for which payment was made. Prescription receipts must include the name of the drug and the date the prescription was filled. Reimbursement for prescription expenses should be requested on Form CA-915, which is used in addition to the Universal Claim Form. As with direct payments, the amount claimed may be reduced according to the OWCP fee schedule.

h. Insurance Companies. Sometimes bills for a work-related injury are submitted to an employee's health insurance carrier. The carrier may request reimbursement for such charges by submitting a completed HCFA-1500 or similar OWCP-approved form. The form should list procedures and charges for each provider, and copies of paid bills and cancelled checks should be attached. The form should also note the carrier's Tax Identification Number.

i. Transportation Expenses. Unless transportation is furnished by the government, the employee may be reimbursed for travel expenses to obtain medical care. Travel should be undertaken by the shortest route and by public conveyance, such as bus or subway, unless the medical condition requires the use of a taxicab or specially



equipped vehicle. An employee who uses his or her automobile will be reimbursed at the standard mileage rate for government travel. Standard Form 1012 should be used to claim reimbursement for travel expenses. All items will be reimbursed on the basis of actual expense; a per diem allowance is not payable. Wages and travel expenses of an attendant to accompany the employee may be approved if his or her condition is such that travel cannot be accomplished otherwise. Authorization for this expense should be obtained in advance of the travel if possible.

j. Incorrect Payments. An employee, who receives a reimbursement which he or she knows to be incorrect, either partially or totally, should return the check to OWCP immediately. If an overpayment occurs, OWCP will determine whether the beneficiary is with fault in creation of the overpayment. Only if a beneficiary is determined to be without fault may waiver of the overpayment be considered.

## **29. Disability Benefits.**

An employee who suffers work-related disability may be entitled to receive one or more types of wage-loss compensation, according to the nature and extent of disability incurred.

a. Temporary Total Disability. Compensation based on loss of wages is payable after continuation of pay ends or from the beginning of pay loss. Without dependents, an employee is entitled to compensation at the rate of 66 2/3% of his or her salary. With dependents, he or she is entitled to compensation at the rate of 75% of the salary.

b. Dependents. The following are considered dependents for compensation purposes:

(1) A wife or husband residing with the employee or receiving regular support payments from him or her, either court-ordered or otherwise.

(2) An unmarried child who lives with the employee or who receives regular contributions of support from him or her, and who is under the age of 18, or over the age of 18 and incapable of self-support due to physical or mental disability.

(3) A student between 18 and 23 years of age who has not completed four years of post-high school education and who is regularly pursuing a full-time course of study.

(4) A parent who is wholly dependent upon and supported by the employee.

c. Waiting Days. A three-day waiting period, for which no compensation is payable, applies except where disability lasts more than 14 days or permanent disability results from the injury. In these cases compensation is paid for the three days. Where COP is paid, the three-day waiting period begins after the 45<sup>th</sup> day of COP.

d. Schedule Awards: Compensation is provided for specified periods of time for the permanent loss, or loss of use, of certain members and functions of the body. Partial loss or loss of use of these members and functions is compensated on a proportional basis.

e. Medical Evidence Required. Before OWCP can consider payment of a schedule award, the condition of the affected part of the body must reach maximum medical improvement. This determination involves a medical judgment that the condition has permanently stabilized. In most cases, the percentage of impairment is determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, and the evaluation on which the award is based must conform to the rules set forth there.

f. Claim and Payment. Form CA-7 may be used to file a claim for schedule award, or consideration may be requested by narrative letter. Compensation for schedule awards is computed by multiplying the indicated number of weeks times 66 2/3 percent (without dependents) or 75 percent (with dependents) of the pay rate.

g. Decision. In issuing a schedule award, OWCP will notify the employee and agency of its length (in number of weeks or days), its starting date (the date of maximum medical improvement), the pay rate on which benefits are computed, and the compensation rate. The decision will include a description of the employee's appeal rights.

h. Schedule awards can be paid even if the employee returns to work. Employees may not, however, receive wage-loss compensation and schedule award benefits concurrently for the same injury. If an employee sustains a period of total disability during the course of the award, it may be interrupted to pay the period of disability; the schedule award will resume afterwards. If an employee dies during the course of a schedule award from causes unrelated to the injury, his or her dependents are entitled to the balance of the award at the rate of 66 2/3 percent.

i. Loss of Wage-Earning Capacity. When the medical evidence shows that the employee is no longer totally disabled, OWCP will work toward his or her reemployment, either with the original agency or with another employer. If the employee is reemployed at a lower-paying job, or if OWCP determines that he or she can perform the duties of a lower-paying job that is deemed suitable, medically and otherwise, compensation will be paid on the basis of the loss of wage-earning capacity.

j. Payment. The FECA provides that employees who are partially disabled by a work-related injury or illness shall be compensated at a rate equal to 66 2/3% (without dependents) or 75% (with dependents) of the wage

loss incurred as a result of the disability. (Paragraph a(1) above discusses dependents.) Benefits are paid for the duration of the wage loss due to work-related disability.

k. Decision. When OWCP determines that the employee can perform a particular job and that the job fairly and reasonably represents the employee's wage-earning capacity, or is otherwise suitable and available, OWCP issues a formal decision. This decision describes the basis for this determination and the formula used to compute the new level of benefits, and it also contains a description of the employee's appeal rights.

### **30. Death Benefits.**

The survivors of a Federal employee whose death is work-related are entitled to benefits in the form of compensation payments, funeral expenses, transportation expenses for the remains, if necessary, and payment for termination of the deceased's status as a Federal employee.

a. Entitlement. The following individuals are entitled to compensation:

- (1) A widow or widower;
- (2) An unmarried child under the age of 18, or over the age of 18 who is incapable of self-support due to mental or physical disability;
- (3) A child between 18 and 23 years of age who has not completed four years of post-high school education and is regularly pursuing a full-time course of study;
- (4) A parent, brother, sister, grandparent, or grandchild who was wholly or partially dependent on the deceased.

b. Compensation Payments. Compensation is paid at the following rates:

- (1) A surviving spouse with no eligible children is entitled to compensation at the rate of 50% of the deceased employee's salary. Benefits are paid to the spouse until death or remarriage if he or she is under age 55. If a spouse under age 55 remarries, OWCP makes a lump-sum payment equal to 24 times the monthly compensation at the time of remarriage. Remarriage after the age of 55 does not affect benefits.
- (2) A surviving spouse who has eligible children is entitled to compensation at the rate of 45 percent of the deceased employee's salary. An additional 15 percent is payable for each child, to a maximum of 75 percent of the salary. The children's portion is paid on a share-and-share-alike basis.
- (3) If the deceased employee leaves no spouse, the first child is entitled to 40 percent and each additional child is entitled to 15 percent of the deceased employee's salary, to a maximum of 75 percent, payable on a share-and-share-alike basis.

(4) Other surviving dependents may be entitled to benefits at various percentages specified by the FECA according to the degree of dependence. Contact the district office for information about claims in this category.

c. Funeral and Burial Expenses. Up to \$800 will be paid for funeral and burial expenses. If the employee dies away from his or her area of residence, the cost of transporting the body to the place of burial or cremation will be paid in full. Itemized funeral bills should be sent to OWCP. In addition, a \$200 allowance will be paid in consideration of the expense of terminating the deceased's status as a Federal employee.

d. Death Gratuity. Survivors of employees who died in the line of duty on or after August 2, 1990 are entitled to a death gratuity not to exceed \$10,000, less burial and administrative expenses paid by OWCP. Death gratuity payments, which are made by employing agencies, do not constitute dual benefits, and no election between them and OWCP benefits is required.

### **31. Dual Benefits.**

a. The FECA prohibits payment of compensation and certain other Federal benefits at the same time. This prohibition does not, however, prevent an individual from filing for benefits from more than one government program at a time. For instance, a claimant for disability benefits may file for a retirement annuity (regular or disability) while his or her claim with OWCP is pending. Similarly, a claimant for death benefits may file for a death annuity while his or her claim with OWCP is pending. Only if both benefits are approved will the rules governing dual benefits be invoked.

b. Office of Personnel Management (OPM). Except for schedule awards, a person may not receive disability benefits from OWCP concurrently with a regular or disability annuity (CSC or FERS). Also, a person may not receive death benefits from OWCP concurrently with a survivor's annuity (CSC or FERS).

c. Department of Veterans Affairs (VA). Individuals entitled to receive both compensation from OWCP and veterans' benefits may need to elect between the two. Such an election is required when the disability or death resulted from an injury sustained in civilian Federal employment and the VA has held that it was caused by military

service, or when the VA increases a service-connected disability award due to an injury sustained in Federal civilian employment. (In the latter case the election involves only the increase in VA benefits due to disability incurred during civilian employment.) No election is required between OWCP benefits and VA benefits for strictly service-related disability. In death claims, OWCP may not duplicate any payment made by the VA for funeral or burial expenses, and the total payable by both agencies may not exceed \$800.

d. Social Security Administration. An employee may receive Social Security payments and OWCP benefits at the same time, subject to income limitations imposed by the Social Security Administration. OWCP will offset any Social Security old age or death benefits which are attributable to the employee's Federal service and paid to an employee or his or her survivors.

e. Other Federal Income. An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the armed forces or other uniformed services subject to reduction of such pay in accordance with 5 U.S.C. 5532 (b).

### **32. Computing Compensation.**

a. While compensation is usually claimed in two-week increments to conform to standard Federal pay periods, compensation checks are issued on a weekly or four-weekly basis. Payments of compensation for brief periods of temporary total disability or schedule impairment are issued on a weekly basis, while longer-term payments for disability, schedule award and death are made every four weeks. Checks may be sent to the beneficiary or to a financial institution which he or she designates, but they may not be sent in care of the employee's representative unless guardianship or conservatorship is established.

b. Pay Rate. For both disability and death claims, the pay rate used to compute payments is the one in effect on the date of injury, date of recurrence, or date disability began, whichever is higher. Thus, the pay rate for compensation purposes may change over the life of a claim. The salary used to compute compensation is not affected, however, by general increases in the rate paid for the employee's grade and step. Moreover, the pay rate is not affected by any promotion or raise the employee might have received in the future.

c. Additional Elements of Pay. Included in the salary are: night shift; Sunday differential; holiday pay; hazard pay; dirty work pay; quarters allowance and post differential for overseas employees; and extra pay authorized by the Fair Labor Standards Act (FLSA) for employees who receive annual premium pay for standby duty and who also earn and use leave on the basis of their entire tour of duty, including periods of standby duty. Overtime pay is not included, except for administratively uncontrollable work covered under 5 U.S.C. 5545©(2).

d. Compensation Rate. The compensation rate is the percentage applied to the salary to determine the monetary amount of the compensation payment.

e. Cost-of-Living Increases. Each March 1, the increase in the cost of living for the preceding calendar year is determined. If the beneficiary has been entitled to compensation for at least one year before March 1, a cost-of-living increase is applied to the benefits.

f. Minimum and Maximum Rates. The law provides for minimum and maximum payments of compensation.

(1) Disability. Compensation for temporary total disability or schedule awards may not exceed 75 percent of the basic monthly salary of an employee at the highest step of the GS-15 level. For temporary total disability, it may not be less than 75 percent of the basic monthly salary of an employee at the first step of the GS-2 level or actual pay, whichever is less.

(2) Death. Compensation for death may not exceed 75 percent of the highest step of the basic GS-15 level, and it may not be less than the minimum pay of the first step of the basic GS-2 salary. In no case may it exceed the employee's salary except when the excess is created by cost-of-living increases.

(3) Buy-back of Leave. Compensation entitlement for leave repurchase is computed in the same way as compensation for temporary total disability. Because leave is paid at 100% of the usual wage rate and compensation is paid as a percentage, the employee will likely owe the agency money for repurchased leave.

g. Form CA-7a is used when dates of leave are intermittent or when more than one continuous period of leave is claimed. Form CA-7b explains how leave is repurchased and asks the agency to estimate the amount of compensation payable. The agency should advise the employee of the amount it requires to reinstate the leave and agree to the transaction before submitting the form.

h. Lump-Sum Payments. The FECA was designed to provide periodic payments of compensation benefits so that beneficiaries would have a continuing source of income. With few exceptions, such benefits are free from speculation, fluctuation, and attachment by creditors, and they are also generally free from taxes. OWCP will consider making a lump-sum payment of compensation only to pay a schedule award or as a survivor's benefit to a widow or widower who remarries before age 55.

i. **Incorrect Payments.** An employee who receives a compensation payment which is incorrect should return the check to OWCP immediately. If an overpayment occurs, OWCP will decide whether the beneficiary is with fault in creating the overpayment. Only if OWCP determines that the beneficiary is without fault may waiver of the overpayment be considered.

j. **Health Benefits.** OWCP makes deductions for health benefits coverage in cases where beneficiaries are entitled to continue their enrollment. Compensation must be paid for at least 28 days for deductions to be made, and deductions cannot be made for periods less than 14 days. The following requirements must be met to continue enrollment:

(1) **Disability.** If an employee was enrolled in a health plan under the Federal Employees' Health Benefit Plan at the time of injury, the enrollment will continue while compensation is being paid.

(2) **Death.** Enrollment may continue for the surviving family members if the deceased employee was enrolled for Self and Family at time of death and at least one covered family member receives compensation as a surviving beneficiary under the FECA.

k. **Transfer.** If the employee will likely be on OWCP rolls for more than six months, OWCP will ask the employer to transfer the enrollment. If the employee returns to duty, OWCP will transfer the enrollment back to the agency, even if the employee is receiving compensation for loss of wage-earning capacity. If compensation benefits are terminated, or if the employee elects an annuity from OPM, OWCP will transfer enrollment to OPM. OWCP will also transfer to OPM the enrollment of a retired employee who is receiving a schedule award.

l. **Optional Life Insurance (OLI).** For claimants injured before January 1, 1990, basic life insurance continues at no cost to the employee while he or she is receiving compensation, unless the employee has elected Post-Retirement Basic Life Withholdings at 100% or 50% of the original value. Claimants injured on or after January 1, 1990 must pay for basic life insurance.

### **33. Nurse Services.**

a. **Registered Nurses (RNs)** under contract to OWCP meet with employees, physicians, and agency representatives to ensure that proper medical care is being provided and to assist employees in returning to work. OWCP refers for such services all employees with approved traumatic injury claims who have continuing disability, and, on a selective basis, employees with approved occupational illness claims who have continuing disability.

b. **Contacting the Interested Parties.** The RN contacts the employee, attending physician, and supervisor as needed to address the employee's questions about medical care; obtain treatment plans, return-to-work dates, and descriptions of work limitations; and explore availability of light- or limited-duty jobs. These contacts, which may be by telephone or in person, generally occur after the 45-day COP period has ended.

c. **Return to Work.** Conference calls may be held to arrange for return to work. Such a call should always include the agency official who has the authority to offer a light- or limited-duty job. When an employee returns to work, the RN may accompany him or her on a walk-through of the job to ensure that the duties are within the employee's medical limitations and that both the employee and the supervisor understand the limitations.

d. **Agency Nurses.** The RN may occasionally coordinate care with an agency nurse. As a rule, however, agencies should not assign their own nurses to work with employees simultaneously with OWCP RNs.

e. **Penalties.** Should an employee refuse to cooperate with an OWCP nurse or refuse to make a good faith effort to obtain reemployment, OWCP may reduce or terminate compensation depending on the circumstances of the refusal.

### **34. Vocational Rehabilitation Services.**

a. The FECA at 5 U.S.C. 8104 provides for vocational rehabilitation services to assist disabled employees in returning to gainful employment consistent with their physical, emotional, and educational abilities. An employee with extended disability may be considered for rehabilitation services if requested by the attending physician, the employee, or agency personnel. In addition, OWCP will routinely consider a case for rehabilitation services if the agency cannot reemploy the employee.

b. **Services Provided.** An OWCP Rehabilitation Specialist will contact the employee for an initial interview. The employee will then be referred to a state or private Rehabilitation Counselor for development of a rehabilitation plan. A plan may include one or more of the following: selective placement with the previous employer, placement with a new employer, counseling, guidance, testing, work evaluations, training, and job follow-up. Each employee is provided the services most suitable for him or her, and not every service will be included in a given plan.

c. **Advice to Employee.** When suitable jobs are identified, OWCP will advise the employee that it appears that he or she has a wage-earning capacity of a specific dollar amount which will likely determine future

compensation entitlement; that he or she is expected to return to work in a job similar to the one identified; that partial compensation based on the wage-earning capacity of the indicated job will probably be paid at the end of this effort; and that when he or she has completed any necessary training or other preparation, OWCP will provide 90 days of placement services.

d. Benefits Payable. An employee in an approved vocational rehabilitation program may be paid an allowance in connection with this program not to exceed \$200 per month. The employee is also entitled to compensation at the rate for total disability during the rehabilitation program (payment of a schedule award meets this requirement). When the employee returns to work, OWCP will reduce compensation to reflect the wage-earning capacity if the new job pays less than the old. If reemployment is at the same or higher pay rate than the job held at time of injury, OWCP will terminate compensation benefits. Even if the employee does not return to work, compensation will in all likelihood be reduced.

e. Penalties. Should an employee refuse to participate in an OWCP rehabilitation program or refuse to make a good faith effort to obtain reemployment, OWCP may reduce or terminate compensation depending on the circumstances of the refusal.

f. Constructed Positions. In some situations, reemployment does not occur despite the best efforts of the employee and OWCP. When this happens, OWCP may determine the employee's wage-earning capacity on the basis of a position which the medical evidence indicates the employee can perform and which is available in his or her commuting area.

g. Continued Disability Payments. Only after careful medical and vocational development will OWCP determine that an employee has no current wage-earning capacity, and should therefore be carried on the long-term compensation rolls at the rate for total disability.

**FOR THE GOVERNOR:**

**WILLIAM H. WADE II**

*Major General*

*The Adjutant General*

**OFFICIAL:**



**STUART D. EWING**

*Captain, CA ANG*

*Deputy, Human Resources Officer*